

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF)
AMERICA,)
)
Plaintiff,)
)
vs.) 08-423
)
JUSTIN SMITH,)
)
Defendant.)

U.S.P.O. and Courthouse
Courtroom 8A
700 Grant Street
Pittsburgh, PA 15219
Wednesday, July 21, 2010
1:00 p.m.

BEFORE: THE HONORABLE MAURICE B. COHILL, JR.

CHANGE OF PLEA

REDACTED TRANSCRIPT

TRANSCRIPT OF PROCEEDINGS

Reported by:

Lee Ann Reid
Court Reporter

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AGENCY

COUNSEL PRESENT:

For the United States Government:

Faithe Moore Taylor, Esq.
U.S. Attorneys Office
Eastern District of Pennsylvania
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Philadelphia, PA 19106
And
Jason P. Bologna, Esq.
U.S. Attorneys Office
Eastern District of Pennsylvania
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106

For the Defendant:

Thomas Livingston, Esq.
Federal Public Defenders Office
Western District of Pennsylvania
1500 Liberty Center
1001 Liberty Avenue
Pittsburgh, PA 15222

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P R O C E E D I N G S

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(Call to Order of the Court.)

JUDGE MAURICE B. COHILL, JR.:

Mr. Livingston, as I understand it, your client
has indicated a desire to enter a plea of
guilty today; is that correct?

MR. THOMAS LIVINGSTON: Yes,
Your Honor.

THE COURT: Will you stand and
be sworn, please.

(The Defendant is sworn.)

THE COURT: Would you state
your name for the record, please.

MR. JUSTIN SMITH: Justin
Smith.

THE COURT: Mr. Smith, do you
understand that you have been sworn and your
answers to my questions will be given under
oath so that you would be subject to the
penalties of perjury or making false statements
if you don't answer truthfully?

THE WITNESS: Yes, sir.

THE COURT: What's your date

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of birth?

THE WITNESS: November 9,
1988.

THE COURT: And what is your
address?

THE WITNESS: 318 South Enola
Drive, Enola, Pennsylvania.

THE COURT: How far did you go
in school?

THE WITNESS: 10th grade.

THE COURT: Mr. Livingston,
have you been able to communicate with your
client in a sense that you believe he
understands you and you understand him?

MR. LIVINGSTON: Yes, I have,
Judge.

THE COURT: Mr. Smith, are you
currently or have you recently been under the
care of a physician or a psychiatrist?

THE WITNESS: No, sir.

THE COURT: Have you been
hospitalized or treated for a narcotic
addiction?

THE WITNESS: No, sir.

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THE COURT: Have you been
hospitalized or treated for alcohol abuse?

THE WITNESS: No, sir.

THE COURT: Have you been
hospitalized or treated for any sort of mental
illness?

THE WITNESS: No, sir.

THE COURT: Are you under the
influence of any narcotic, drug, medicine,
pill, or alcoholic beverage today?

THE WITNESS: No, sir.

THE COURT: Have you taken any
drugs, medicine, or pills, or have any
alcoholic beverages in the past 24 hours?

THE WITNESS: No, sir.

THE COURT: How do you feel
physically and mentally right now?

THE WITNESS: Excuse me?

THE COURT: How do you feel
physically and mentally right now?

THE WITNESS: Fine.

THE COURT: Are you clear in
understanding exactly what's happening here
now?

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THE WITNESS: Yes, sir.

THE COURT: Do either of you attorneys have any data as to Mr. Smith's competency at this time?

MR. LIVINGSTON: No, I don't, Your Honor.

MS. FAITHE MOORE TAYLOR: No, Your Honor.

THE COURT: Based on the answers to the foregoing questions, I find that Mr. Smith is competent to plead.

Have you had an ample opportunity to discuss your case with your attorney?

THE WITNESS: Yes, sir.

THE COURT: Have you told him all the facts in connection with the charges?

THE WITNESS: Yes, sir.

THE COURT: Are you satisfied with the job that he has done for you?

THE WITNESS: Yes, sir.

THE COURT: I want to go over with you now just what your rights would be, what your constitutional rights would be if this case were to go to trial, Mr. Smith.

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First of all, do you understand that under the constitutional laws of the United States you are entitled to a speedy and a public trial by a jury on the charges contained in the Indictment?

THE WITNESS: Yes, sir.

THE COURT: Do you understand that you had the right to an attorney at every stage of the proceedings in your case and that if at any time you can't afford an attorney, one will be provided for you without charge?

THE WITNESS: Yes, sir.

THE COURT: Do you understand that at your trial you would be presumed to be innocent and the Government would be required to prove you guilty by competent evidence and beyond a reasonable doubt to the satisfaction of the Judge and a unanimous jury?

THE WITNESS: Yes, sir.

THE COURT: Do you understand that being presumed to be innocent means that you would not have to prove that you were innocent?

THE WITNESS: Yes, sir.

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THE COURT: Do you understand that at the trial the witnesses for the Government would have to come to Court and testify in your presence and your attorney or you could cross-examine the witnesses for the Government, object to evidence offered by the Government, and offer evidence on your behalf?

THE WITNESS: Yes, sir.

THE COURT: Do you understand that at the trial you would be entitled to compulsory process to call witnesses; that is you could subpoena witnesses and compel them to come to Court to testify for you?

THE WITNESS: Yes, sir.

THE COURT: Do you understand that at the trial you will have the right to testify if you chose to do so, but you would also have the right not to testify and no inference or suggestion of guilt would be drawn from the fact that you did not testify?

THE WITNESS: Yes, sir.

THE COURT: If you do enter a plea of guilty today, you understand that you will be waiving your right to a trial and the

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other rights that I have just described and there will not be a trial of any kind and I will enter a judgment of guilty and sentence you on the basis of your guilty plea after considering the presentence report?

THE WITNESS: Yes, sir.

THE COURT: If you do enter a plea of guilty today, do you understand that you will also have to waive your right not to incriminate yourself since I will ask you questions about what you did in order to satisfy myself that you are guilty and you will have to acknowledge your guilt on the record?

THE WITNESS: Yes, sir.

THE COURT: Do you understand that any statements regarding the events that you may have made to the US Attorney during the course of any plea negotiations could not be used against you in a trial in this case?

THE WITNESS: Yes, sir.

THE COURT: Having discussed these rights with you, is it still your wish to enter a plea of guilty today?

THE WITNESS: Yes, sir.

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THE COURT: Have you received a copy of the Indictment that was filed in this case?

THE WITNESS: Yes, sir.

THE COURT: Have you discussed with Mr. Livingston the charges in the Indictment to which you intend to plead guilty?

THE WITNESS: Yes, sir.

THE COURT: Just for the record, I think it's going to be a good idea for me to read these to you. There are four counts here.

Count 1 of the Indictment charges -- I'm quoting -- "On or about May 16, 2007 in Summerdale in the Middle District of Pennsylvania Defendant Justin Smith knowingly and intentionally distributed a mixture and substance containing a detectable amount of 4-methyl-2,5" -- that's dimethoxyamphetamine -- "also known as Nexus or DOM, D-O-M, which is a schedule I controlled substance which resulted in serious bodily injury to a person in violation of 21 United States Code Section 841, Subsections (a)(1), (b)(1)(C)." And that

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section of the Code makes it a crime to knowingly and intentionally distribute a controlled substance such as DOM or Nexus which results in serious bodily injury.

Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: And the shorthand name for that count is just distribution causing serious bodily injury.

Then the second one is, the shorthand one for that is just called distribution.

And Count 2 of the Indictment charges that, "On or about May 16, 2007 in Summerdale in the Middle District of Pennsylvania Defendant Justin Smith knowingly and intentionally distributed a mixture and substance containing a detectable amount of 4-methyl-2,5 dimethoxyamphetamine also known as Nexus or DOM, a Schedule I controlled substance in violation of Title 21 United States Code section 841, subsections (a)(1), (b)(1)(c)." And that particular section makes it a crime to knowingly and intentionally distribute a

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controlled substance such as DOM or Nexus.

And in the law where we talk about something as not knowingly and intentionally, by knowingly we mean that you knew what you were doing when you made some mistake that you made. And intentionally is that you intended to, whatever act you took, that you did that on purpose.

Do you understand all of that?

THE WITNESS: Yes, sir.

THE COURT: Then Count 3 which is distribution to a person under 21. And Count 3 states that, "On or about May 16, 2007 in Summerdale in the Middle District of Pennsylvania the Defendant Justin Smith, being over the age of 18, knowingly and intentionally distributed a mixture and substance containing a detectable amount of 4-methyl-2,5 dimethoxyamphetamine also known as Nexus or DOM, a schedule I controlled substance to a person under 21 years of age that is in violation of Title 21 United States Code section 841, subsections (a)(1), (b)(1)(c)." And section 859(a) of Title 21 provides for

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enhanced penalties for knowingly and intentionally distributing a controlled substance such as DOM or Nexus to a person under 21 years of age.

And then Count 4, which is simply possession, that states that, "On or about May 16, 2007 in Summerdale in the Middle District of Pennsylvania, the Defendant Justin Smith knowingly and intentionally possessed a mixture and substance containing a detectable amount of 2,5 dimethoxyamphetamine known as Nexus or DOET" -- D-O-E-T -- "a Schedule I controlled substance" -- note this is a different chemical composition than the drug known as DOM, D-O-M -- "in violation of Title 21 United States Code Section 844a." And that particular section makes it a crime to knowingly and intentionally possess a controlled substance such as DOET or Nexus.

Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: Do you have any question about what you've been charged with here?

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THE WITNESS: No, sir.

THE COURT: Now, I want to go over with you now just what the Government would have to prove if this case were to go to trial. In any criminal case the Government has to prove certain elements upon each count. These are the elements of the offense for each of the counts which we're talking about here.

For distribution causing seriously bodily injury, they have to prove that you knowingly or intentionally possessed a controlled substance, namely 4-methyl-2,5 dimethoxyamphetamine also known as Nexus, also known as DOM, that you distributed that substance, that you knew that the substance was a controlled substance; in other words, controlled by the law. And, last, that serious bodily injury resulted from the use of the controlled substance. That's what they would have to prove for Count 1.

Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: Now, for Count 2, distribution, to establish that they would have

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to prove that you knowingly or intentionally possessed a controlled substance, namely 4-methyl-2,5 dimethoxyamphetamine also known as Nexus, also known as DOM, D-O-M, that you distributed that controlled substance, and that you knew the substance was a controlled substance.

Then for Count 3, that's distribution of a person under age 21, to establish that violation, they would have to prove -- then, of course, in each of these cases, they would have to prove it to the satisfaction of the Judge and a unanimous jury. They would have to prove that you knowingly or intentionally possessed a controlled substance, namely 4-meythl-2,5 dimethoxyamphetamine also known as Nexus, also known as DOM, that you distributed that substance, and that you knew that the substance was a controlled substance.

The fourth thing they would have to prove is that you were at least 18 years of age at the time of the distribution and that the victim was under the age of 21 years of age.

Do you understand all of that?

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THE WITNESS: Yes, sir.

THE COURT: Then the last count is possession. And there they would have to prove that you knowingly or intentionally possessed a controlled substance, namely 4-methyl-2,5 dimethoxyamphetamine also known as Nexus also known as DOM, that you knew that the substance was a controlled substance, and that you did not possess the controlled substance pursuant to a valid prescription; in other words, you didn't have a prescription for it.

Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: Do you have any questions about what you're charged with here?

THE WITNESS: No, sir.

THE COURT: I think I already did define knowingly and intentionally, but let me do that again. The term knowingly means that you were conscious and aware that you were engaged in the act charged and knew the surrounding facts and circumstances that make out the offense. And intentionally, when we say intentionally that means to act

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deliberately and not by accident or mistake
and/or inadvertently.

Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: Now, I want to go
over with you the possible penalties here. And
there are two kinds of penalties that we have
to consider. First of all is what is the
United States Code, what does the Statute say
about the penalties for these violations. And
then, secondly, the Court also has to consider
the so-called Sentencing Guidelines.

First of all, let me tell you what
the Statute says about them. On the first
count, distribution of a controlled substance
that results in serious bodily injury, that
calls for a statutory term of imprisonment of
not less than 20 years to a maximum of life.
That is, the minimum sentence you face is 20
years and the maximum that you face is life
imprisonment. It also calls for a mandatory
minimum of three years of supervised release up
to a lifetime of supervised release and a fine
of one million dollars.

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2 Now, the second count for violation
3 of distribution of a controlled substance,
4 you're subject to a maximum term of
5 imprisonment of 20 years, a mandatory minimum
6 of 3 years of supervised release up to a
7 lifetime of supervised release, and a fine of
8 one million dollars.

9 At Count 3 for violation of
10 distribution of a controlled substance to a
11 person under 21 years of age you're subject to
12 a statutory mandatory minimum of imprisonment
13 of 1 year to a maximum sentence of 40 years
14 imprisonment, a mandatory minimum of 6 years
15 supervised release up to a lifetime of
16 supervised release, and a fine of 2 million
17 dollars.

18 Then on Count 4, possession of a
19 controlled substance, you're subject to a
20 maximum term of imprisonment of 1 year and a
21 fine of \$1,000.

22 And in addition to those statutory
23 penalties that I have just mentioned, we're
24 also required to impose a so-called special
25 assessment of \$100 on each count. So in this

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case it would be \$400 for four counts.

So, in other words, you're looking at a total maximum sentence here of life imprisonment with a mandatory minimum of 20 years, a lifetime of supervised release with a mandatory minimum of 6 years supervised release, and fines totaling 4 million \$1,000 and a \$400 special assessment.

Do you understand all of that?

THE WITNESS: Yes, sir.

THE COURT: Now, have you and Mr. Livingston talked about how Sentencing Guidelines might apply in this case?

THE WITNESS: Yes, sir.

THE COURT: You understand that the Supreme Court a few years ago, the Supreme Court of the United States a few years ago in a ruling said that the District Courts are not required to follow the Sentencing Guidelines, but we have to figure out what the Guideline calls for in order to arrive at --

well, we look to them more or less in an advisory way. And we have to figure out what the Guideline is in order to arrive at

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what hopefully will be a fair and just sentence.

You understand that I wouldn't be able to determine the Guideline Sentence for your case until after a presentence report has been completed and you and the Government had an opportunity to challenge any facts recorded by the probation officer that you might disagree with? Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: Do you understand that the sentence might be different from what either your attorney or the United States' attorney predicted?

THE WITNESS: Yes, sir.

THE COURT: Do you understand that after it's been determined what Guideline applies in the case, the Judge has the authority in some circumstances to impose a sentence that's more severe or less severe than the sentence called for by the Guidelines?

THE WITNESS: Yes, sir.

THE COURT: Do you understand that -- and as I understand it, there is a Plea

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Agreement here which we'll get to in a few minutes. But under some circumstances you or the Government may have the right to appeal any sentence that the Court might impose what would be within the conditions that are set out in your plea? Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: Mr. Smith, has anyone threatened you or anyone else or forced you in any way to indicate you want to plead guilty in this case?

THE WITNESS: No, sir.

THE COURT: Have you made or -- Mr. Livingston, has he made any confession or omissions to the police or other representatives of the Government concerning this matter?

MR. LIVINGSTON: Yes, Your Honor. One aspect of the discovery is a summary of that. And in the context of reviewing that statement, the one document we received verified that it was made after Miranda warnings were --

THE COURT: I'm sorry?

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2 MR. LIVINGSTON: There are two
3 different pieces of discovery that refers to
4 that statement, and you're going to hear one
5 aspect of it in the factual basis here today.
6 Included in the advice of rights preceding
7 statement was Miranda warnings. We discussed
8 the prospect of filing pretrial motions. One
9 of those potential motions would have been a
10 motion to suppress, but consistent with my
11 advice, Mr. Smith is electing to not file a
12 motion to suppress that statement.

13 THE COURT: If you have any
14 feeling that that confession or omission or
15 statement was not freely and voluntarily made,
16 you would, as Mr. Livingston says, have the
17 opportunity to have a suppression hearing for
18 me to determine whether or not that statement
19 was voluntarily made.

20 Are you agreeing with Mr. Livingston
21 that you don't think you need to have that
22 hearing?

23 THE WITNESS: Yes, sir.

24 THE COURT: And I have seen
25 the Plea Agreement. I understand it and have

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reviewed it, but I'm going to ask the
Government, if you would, just give us a
summary of what's in that Plea Agreement. Then
I'm going to ask Mr. Smith and Mr. Livingston
if they agree with Ms. Moore's statement of
what's in the Agreement.

MS. MOORE TAYLOR: Yes, Your
Honor. The summary of the Agreement between
the Government and Mr. Smith and his Counsel is
as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

I believe, Your Honor, those are the essential terms of the Agreement between the Government and Mr. Smith.

THE COURT: Okay.
Mr. Livingston, is that consistent with your understanding of the major contents of the Agreement?

MR. LIVINGSTON: Yes. One other aspect that's specified in the Agreement is that the Government is agreeing that under 3B1.1 of the Sentencing Guidelines, that Mr. Smith is entitled to a three level reduction in the offense level. The language of the Appellate waiver as we have reviewed it

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is in many respects similar to the waiver language that we are familiar with in this district. And I assume the Court is going to want to note the colloquy about that topic.

THE COURT: Mr. Smith, is your hearing what Ms. Moore had to say and what Mr. Livingston had to say consistent with your understanding of what's in the Plea Agreement?

THE WITNESS: Yes, sir.

THE COURT: Has anyone made any representation or promise other than what's in that Plea Agreement that convinced you to plead guilty today?

THE WITNESS: No, sir.

MR. LIVINGSTON: Judge, there's one topic that I discussed with both the Government and with Mr. Smith and it relates to bail status following today's hearing. And the Government is recommending that Mr. Smith remain released on bail pursuant to the terms of the order.

THE COURT: That was my understanding.

MS. MOORE TAYLOR: Yes, Your

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Honor.

THE COURT: Mr. Smith, it is very important that I've been told all of the relevant bargaining that's taken place because I want to guard against any possible misunderstanding of the terms of the Plea Bargain. Is there any representation made by the United States Attorney that is not absolutely clear in your mind?

THE WITNESS: No, sir.

THE COURT: You understand that any recommendation of sentence that might have been agreed to by your lawyer and the prosecution or any agreement by the Government not to oppose your attorney's requested sentence is not binding on me and you might on the basis of your Guilty Plea receive up to the maximum sentence permitted by law?

THE WITNESS: Yes, sir.

THE COURT: You understand that if I choose not to impose a sentence that might be recommended by the Government or by your lawyer and impose a more severe sentence, you will not, therefore, be entitled to

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withdraw a guilty plea?

THE WITNESS: Yes, sir.

THE COURT: Has anyone made any prediction or promise to you as to what the sentence will be?

THE WITNESS: No, sir.

THE COURT: Have any out-of-Court promises, representations, or agreements been made which require you to respond untruthfully to any of my questions? For instance, has anyone told you to tell me that no promise of leniency was made when, in fact, a promise was so made?

THE WITNESS: No, sir.

THE COURT: You understand that you may not at a later date after today claim that there were any promises, representations, agreements, understandings, or threats made by any person that motivated or caused you to enter this Plea other than those that you had the opportunity to tell me about here and now in open Court. Do you understand that?

THE WITNESS: Yes, sir.

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THE COURT: Do you understand
that no one can make promises for me as to how
I will dispose of a case?

THE WITNESS: Yes, sir.

THE COURT: Has anyone
promised or predicted leniency with respect to
any sentence that I might impose?

THE WITNESS: No, sir.

THE COURT: It's very
important, because if anyone has predicted or
promised leniency, I'm putting you on notice
right now that any representation that they
have made is not binding on me and I will
sentence you according to my own conscious and
in following the law. You completely
understand this?

THE WITNESS: Yes, sir.

THE COURT: What made you
decide to plead guilty, Mr. Smith?

MR. LIVINGSTON: Judge, I'm
going to comment on -- as we've been reviewing
this case and looking at the factual elements
of the case, there were several postponements,
some of them based on ongoing discussions

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between the Government and me about one of the essential elements of Count 1, which is the term serious bodily injury.

As time progressed, we filed a motion to compel discovery regarding expert testimony, and that generated the production of grand jury testimony of the treating doctor which you'll hear about in a minute as well as an Affidavit he prepared. You're going to hear the factual basis about the events and consistent with his admission out of Court, it's been my ongoing discussion with Justin Smith that as far as the evidence goes, including his admission, that there is a sufficient factual basis. We were not sure about Count 1 until we saw the opinion of the Doctor in the Affidavit.

But as far as Count 1, which is the one that triggers the 20 year minimum in this case, the other counts sort of ride the tail of that based on the factual basis you're about to hear. So my advice to Justin Smith is that there is, in fact, a factual basis and included in the Plea Agreement with the 5K 3553(b)

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language and 3B1.1 language, the curious thing is Justin Smith could, quote, go to trial and win on Count 1 but still be subject to the same guideline range and even higher without the acceptance of responsibility because the Guideline definition of serious bodily injury is easier for the Government to prove and doesn't require the Affidavit of the treating emergency room doctor that you'll hear about.

So my advice which Mr. Smith has chosen to follow is that there's a sufficient factual basis and the consideration of the Plea Agreement is substantial and the risk of going to trial was far too great to risk the verdict of guilty and a 20 year mandatory minimum.

THE COURT: You're telling me that you're admitting today that you are guilty as charged in the four counts?

THE WITNESS: Yes, sir.

THE COURT: I'm going to ask now for Ms. Moore or Mr. Bologna to tell me what happened here and what the Government would expect to be able to prove. Then, again, I'm going to ask you and Mr. Livingston if you

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agree with her statement of the events of the case.

MS. MOORE TAYLOR: May I proceed, Your Honor?

THE COURT: Yes.

MS. MOORE TAYLOR: If this matter were to go to trial, the Government would present the following evidence. We have filed a fairly significant factual basis. I am going to try to summarize that for the Court.

THE COURT: I have read that.

MS. MOORE TAYLOR: On or about May 16 of 2007 John Jones drove Erik Brandler to Justin Smith's home at 400 Boyer Street in Summerdale, Pennsylvania. The purpose of Erik wanting to go there was to purchase 2C-B from Justin Smith. When Jones reached Smith's home, he dropped Brandler off and he left the area.

Interviews with different witnesses including Mr. Brandler and others who were at the Smith home that night revealed the following: Brandler went into the home and met with Justin Smith and his then girlfriend Dawn Baker. Baker was interviewed and recalled that

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she and Smith both told Brandler not to do too much of the 2C-B because they didn't know how potent this batch was.

while Baker never saw Brandler ingest the drugs, she returned to the room and later found Brandler in Smith's front yard groggy and hallucinating. Justin Smith told Baker that Brandler, in fact, had taken too much 2C-B and that Brandler had snorted it.

During that time for the next five or six hours different individuals came to the Smith home and partied there. These individuals interacted with Brandler, tried to talk to Brandler, observed his deteriorating condition, attempted to get him to focus. He was unable to focus. Attempted to speak to him. He was unable to respond coherently. They tried, including Mr. Smith, to get him to drink water, but he was unable to understand what they were saying. Consequently, unable to follow their direction.

After several hours passed and after observing Brandler's condition, Justin Smith and two other individuals, Troy Eppley and

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2 Joseph Mishalko, made a decision to take Erik
3 Brandler home to his parents so that they could
4 deal with the situation. They got Brandler out
5 of the car and left him on his parents' front
6 lawn. They then took Brandler's cell phone and
7 called Brandler's home. The phone was answered
8 by Bruce Brandler, Erik Brandler's father. And
9 he was told that his son was on the lawn and he
10 needed help. Mr. Brandler recalled that he
11 received that call at approximately 11:30 that
12 night. And he asked the other person on the
13 other end of the phone to identify themselves.
14 They would not. Based on what this caller
15 said, Mr. Brandler proceeded to go outside and
16 there he encountered his son Erik. He
17 described Erik's condition as incoherent and
18 had him immediately rushed to Holy Spirit
19 Hospital. He was then transferred to
20 Harrisburg Hospital where he received treatment
21 for an apparent drug overdose.

22 The Brandlers did not know when they
23 encountered their son what drug they had taken.
24 So Erik's mother retrieves his cellphone and
25 began to call the individuals that were listed

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there. She called John Jones who shared with her the information we just related to the court. Jones also admitted to taking Erik to Justin Smith's home to purchase 2C-B.

Erik Brandler was later after he was treated spoken to at the hospital. He admitted to his mother that he had, in fact, taken 2C-B and that he had gotten it from Justin Smith.

This information was relayed to the police and on May 19, 2007 a search warrant was executed at Justin Smith's home. At the time the search warrant was executed, both Justin Smith and Dawn Baker were inside of the home. Justin Smith was given his Miranda Rights after which he directed the officers to the location of drugs in his home and drug paraphernalia. And that direction resulted in the recovery of the following items: There was white powder in a clear plastic bag that was within a clear ziploc bag located under the keyboard on Mr. Smith's desk. A blue pipe with residue was found inside of a black bag in his desk. A clear sandwich bag containing a green leafy substance was also found inside the black bag.

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A multicolor pipe with residue was found inside Ms. Baker's jacket and then again the black bag that was found near the bed.

The white powder that I referred to was recovered and taken to the lab and determined to be DOET which resulted in the charge of Mr. Smith for possessing that substance. Like DOM, the substance found in Erik Brandler, DOET is a synthetic amphetamine which is generally in the 2C-B family of synthetic amphetamines.

while our investigation revealed that 2C-B or Nexus is the generic name of the drug that's ingested, but the actual chemical makeup could be DOM, DOET, or 2C-B.

An initial report done on Erik at the Harrisburg Hospital indicated solely the presence of a synthetic amphetamine. A later toxicology screen confirmed and identified the substance as DOM or 4-methyl-2,5 dimethoxyamphetamine.

Dr. J. Ward Donovan was Erik's treating physician at Harrisburg Hospital. He studied Erik's symptoms and he found and

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determined that Erik suffered a overdose and that it was a serious bodily injury that if left untreated could have resulted in permanent injury or death. Erik's symptoms as observed by Dr. Donovan included hallucinations, incoherency, sweating, and an increased heart rate.

Dr. Donovan subsequently opined to a reasonable degree of medical certainty that Erik's overdose was a bodily injury that involved a substantial risk of death and a protracted loss or impairment of a mental faculty.

The Government then consulted Dr. Lawson Bernstein who is a forensic toxicologist with a specialty in substance abuse. Dr. Bernstein reviewed all the records and agreed with Dr. Donovan's initial diagnosis of a drug overdose and, in fact, also agreed that that overdose constituted seriously bodily injury. And, in particular, if that overdose was left untreated, it could have led to permanent organ damage or loss of life.

I earlier indicated that Justin

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2 Smith had been given his Miranda warnings and
3 gave a statement. The summary of that
4 statement given to Officer Christopher Kauffman
5 is as follows: Justin Smith indicated that he
6 gave the 2C-B to Brandler the night Brandler
7 overdosed. He purchased the drug from an
8 unknown male at a party and then provided it to
9 several people. Smith went on to tell the
10 police that the usual method of ingesting 2C-B
11 was by placing it into a small amount of tissue
12 and swallowing it. He said he was present when
13 Brandler ingested the 2C-B by snorting it. He
14 indicated that Brandler became incoherent and
15 began to hallucinate. Brandler's condition got
16 worse but no one took him to the hospital
17 because they didn't want to, quote unquote,
18 "deal with all that." After a while Brandler
19 appeared to be better but then he got much
20 worse. It was at this time Smith indicated
21 that he and the others took Brandler home and
22 left him in his front yard.

23 The government would lastly state
24 that at the time Justin Smith distributed these
25 drugs to Erik Brandler, Justin Smith was 18

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years old and Erik Brandler was under the age of 21 and 16 years old.

That would be a summary, Your Honor, of the Government's evidence.

THE COURT: Is that a fair statement of what happened as far as your participation goes?

THE WITNESS: Yes, sir.

THE COURT: Reviewing all the things that we have discussed here today, Mr. Smith, is it still your wish to enter a plea of guilty and waive your right to a trial by jury?

THE WITNESS: Yes, sir.

THE COURT: Mr. Livingston, from the facts that he has told you and based on your earlier statements I guess I know the answer, but from the facts that he has told you, do you concur with his plea of guilty?

MR. LIVINGSTON: Yes, Your Honor, based on the earlier statement.

THE COURT: Do you know of any reason that he should not plead guilty?

MR. LIVINGSTON: No, Your

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Honor.

THE COURT: Do you have any
question to ask me, Mr. Smith?

THE WITNESS: No, sir.

THE COURT: Well, since you do
acknowledge that you are, in fact, guilty as
charged in Counts 1 through 4 of the Indictment
and based on our discussion today, I find that
you know your right to a trial, what the
maximum possible punishment is, and that you
are voluntarily pleading guilty, I will accept
your Guilty Plea and enter a judgment of guilty
on your plea.

We note that Mr. Smith has signed
the Change of Plea Endorsement indicating he is
now pleading guilty to the charges contained in
the Indictment and that's been countersigned by
Mr. Livingston.

I'm going to order a presentence
report here, Mr. Smith, and I'm told by my
clerk that the probation department in Scranton
is the one that's going to be doing the
probation investigation.

Do you understand that,

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Mr. Livingston?

MR. LIVINGSTON: Yes, Your Honor. One of the things we learned in this case is even pretrial supervision is conducted through Scranton and not Harrisburg, so that makes sense.

THE COURT: Well, it's very important that you answer the questions the probation officer asks you to prepare that report because naturally that report is going to be important as to what the ultimate sentence is going to be.

Now, I've been given a sentencing date of Wednesday, November 10, 2010 at 11:00. Now, is it your understanding that's going to be here, Mr. Livingston? The sentence will be in Pittsburgh?

MR. LIVINGSTON: I believe so.

MS. MOORE TAYLOR: Yes, Your Honor. That is our understanding.

THE COURT: Okay. All right. So November 10th, 11:00 here in Pittsburgh.

And I take it the Government has no objection to Mr. Smith being released on bond

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pending sentencing?

MS. MOORE TAYLOR: That's correct, Your Honor, we have no objection.

THE COURT: I think maybe that Plea -- should that Plea Agreement be under seal?

MS. MOORE TAYLOR: Yes.

MR. LIVINGSTON: Yes, Your Honor.

THE COURT: We'll direct that the Plea Agreement be placed under seal and I think perhaps Ms. Moore's recitation of what's in the Agreement ought to be under seal, too.

MS. MOORE TAYLOR: I agree, Your Honor.

MR. LIVINGSTON: Judge, the paper attached to the Plea Agreement is more consistent with your advice of rights about the jury trial, so because it's a Western District of Pennsylvania document, I'm going to -- because there's no language in here different than your colloquy, I'm going to have Mr. Smith sign that paper, but I don't know that that needs to be made part of the record because

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it's the colloquy for the waiver of jury trial.
Either way we can do it.

MS. MOORE TAYLOR: Let's leave
it.

THE COURT: Anything further,
Mr. Livingston?

MR. LIVINGSTON: No, Your
Honor.

THE COURT: Ms. Moore?

MS. MOORE TAYLOR: No, Your
Honor.

THE COURT: Well, then you're
free to go. And you're out under the same
conditions as you've been up until now on your
bond pending sentencing on November 10th.

Court is in recess until November 10th.

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(Proceedings concluded at
1:41 p.m.)

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C E R T I F I C A T E

I hereby certify that the
proceedings and evidence are contained
fully and accurately in the
stenographic notes taken by me on the
hearing of the within cause and that
this is a correct transcript of the
same.

S/Lee Ann Reid

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